

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	99-0593
Illinois Bell Telephone Company	:	
	:	
Investigation of construction charges	:	

ORDER

DATED: August 15, 2000

provide POTS service in outside plant that complies with widely accepted design standards for the last 30 years.

Rhythms and Covad state that Ameritech has repeatedly relied on paragraph 382 of the First Report and Order and paragraphs 190 through 194 from the FCC's UNE Remand Order to justify its special construction charges. That reliance, they contend, is misplaced because Rhythms and Covad have never requested free conditioning. Ameritech is entitled to recover costs associated with a conditioned loop, and it is already receiving that compensation, according to Rhythms and Covad. They argue that Ameritech charges a recurring rate that recovers the full cost of an efficient fiber and DLC-based network free of load coils, repeaters, and excessive bridged tap.

The FCC, according to Rhythms and Covad, recognized in its UNE Remand Order that ILECs, such as Ameritech, may be motivated to exaggerate their conditioning "costs" in order to recover more than they would be entitled to under the TELRIC methodology. They note that in paragraph 194 of the UNE Remand Order, the FCC stated "that incumbent LECs may have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits." Rhythms and Covad argue that such is the case here. They assert that in many cases the level of special construction charges that Ameritech has sought to impose for conditioning substantially exceeds the total investment per loop in even the highest-cost band in its existing TELRIC studies. Such a cost structure, they claim, leads to the conclusion that it would be more cost-effective for Ameritech to build entirely new loop plant to serve a request for an unbundled loop than for Ameritech to use an existing loop from which it must, for example, remove load coils.

To avoid such inflated costs, Rhythms and Covad say, the FCC deferred to state commissions the role of ensuring that the costs ILECs impose on competitors for line conditioning are in compliance with the TELRIC pricing rules. Because Ameritech is already recovering conditioning costs through its recurring loop charge, they aver, the Commission must find that any additional special construction charges for conditioning are improper.

According to Rhythms and Covad, even if the Commission determines that Ameritech should be able to impose additional charges for conditioning, Ameritech should be required to adopt fixed, interim conditioning rates. They argue that the interim conditioning charges from the joint Covad-Rhythms arbitration with Southwestern Bell Telephone ("SWBT") serve as a reasonable proxy for TELRIC-based costs. They recommend that these interim rates should remain in effect until Ameritech provides a properly documented loop conditioning cost study in compliance with the SBC/Ameritech merger conditions and all affected parties have an opportunity to review and comment on the study.

#### **D. Commission Conclusion**

In addressing the issue of double recovery, certain CLEC witnesses in this proceeding argue that Ameritech's current UNE rates are based on a misunderstanding of the FCC's rules and improper assumptions regarding Ameritech's network. Under their position, special construction charges are never appropriate because the FCC only authorized the recovery of costs from CLECs through TELRIC rates based on a forward looking network that would, in their opinion, not require any modifications to serve CLECs. To the extent that any party advocates revisions to Ameritech's UNE rates or the assumptions upon which those rates are based, the Commission is of the opinion that this investigation is not the appropriate forum in which to do so. This proceeding was initiated to determine whether Ameritech's application of special construction charges is discriminatory or preferential. Although the Commission is intrigued by the argument that rates for UNEs and retail service should be based on the same network assumptions, to adopt such an argument at this time would exceed the scope of this investigation. Furthermore, the Commission does not agree that the FCC prohibits the assessment of all special construction charges. As may be seen from the list of merger conditions adopted in CC Docket No. 98-141, the FCC sanctions Ameritech's collection of TELRIC based charges for loop conditioning—charges which are in addition to the standard TELRIC rates for UNEs.

In addition, McLeod, Ovation, MCI WorldCom, and Allegiance argue that Ameritech's current TELRIC rates do not reflect the fact that unbundled loops can be provisioned from NGIDLCs. McLeod, Ovation, MCI WorldCom, and Allegiance's witness, Michael Starkey, indicates that there are four technically feasible unbundling methods that can provide CLECs with non-discriminatory access to customers served by IDLCs: (1) multiple switch hosting, (2) integrated network architecture, (3) digital cross-connect system grooming, and (4) side-door grooming. In its UNE Remand Order, however, the FCC stated that the first two options only work with GR-303 compatible systems while the third option is very expensive and the fourth can only be done for a few lines per RT.<sup>47</sup> While Ameritech's network does employ some GR-303 compatible systems, the total of such represents a minority among Ameritech's systems. Even if the four options were all economical and generally available throughout Ameritech's network, the Commission will not require Ameritech to modify its TELRIC rates in this proceeding to reflect such because, as indicated above, this docket is not the appropriate forum in which to modify Ameritech's TELRIC rates and because the record contains no specific cost information regarding the four options.

This is not to suggest, however, that the Commission will never recognize one or more of these four options or other options for unbundling IDLCs and require Ameritech's cost studies to reflect such. The Commission is particularly interested in these possibilities since SBC's Project Pronto entails spending \$6 billion upgrading its network, including the installation of GR-303 compatible NGIDLCs in Illinois. Ameritech's own witnesses appear to appreciate the impact of these upgrades on CLECs. At first Ameritech witness Florence testifies that Ameritech does not plan to deploy GR-303 compatible NGIDLCs in its region in the foreseeable future and that only UDLCs can be used to provision unbundled loops. Ameritech witness Suthers,

<sup>47</sup> UNE Remand Order, ¶1217, fn. 417.

however, indicates that Ameritech's new IDLC facilities do not present the same unbundling problems as some of its older facilities since current NGIDLC technology permits unbundled loops to be provisioned without installing new COTs or RTs. Mr. Florence later revises his earlier position by stating that IDLC systems can be unbundled but only with significant work. Under cross-examination, Mr. Florence further concedes that Ameritech is installing GR-303 compatible NGIDLCs as part of Project Pronto, but claims that it is doing so only for bundled loops. At the appropriate time and in the proper forum, the Commission will consider revisions to Ameritech's cost studies reflecting the unbundling of NGIDLCs. At present, however, the Commission will conduct its double recovery analysis of Ameritech's special construction policy without taking into account the limited instances where circumstances and technological advances make it feasible to provision UNEs from IDLCs.

All of the active parties presented extensive argument on the question of double recovery. For the most part the Commission concurs with the position of Staff. Double recovery will be addressed separately with regard to complex work, IDLC/RSU technology, loop conditioning, and placing and splicing additional cable.

Ameritech argues that its complex work activities are not relevant to this investigation because it no longer intends to collect special construction charges for these activities and instead intends to recover the alleged costs associated with these activities through its TELRIC rate for UNEs. The Commission disagrees with this argument and concludes that it is entirely within the Commission's authority to evaluate the propriety of Ameritech's complex work activities. When this docket was initiated, Ameritech assessed special construction charges for complex work; it may not avoid scrutiny of such charges by relabeling them and attempting to recover the alleged costs in a different manner.

The first type of complex work is line station transfers. Mr. Phipps states that a line station transfer involves converting an Ameritech end user from its non-integrated facilities to its integrated facilities for the purpose of freeing up a copper loop for a CLEC's use. He states that Ameritech would attempt a line station transfer when a CLEC requests a loop in an integrated environment where no unused copper loops are available for the CLEC's use. The Commission first notes that it appears that Ameritech's current TELRIC rates do not expressly recover the specific costs associated with line station transfers. As discussed below, however, the Commission finds that Ameritech may not assess special construction charges on a CLEC when COT technology is not utilized in conjunction with IDLC and a loop is unbundled by building separate non-integrated facilities since to do so constitutes double recovery. The Commission concludes that it would not be a reasonable result for Ameritech to assess special construction charges on a CLEC when it incurs lower costs associated with a line station transfer but does not assess special construction charges to build separate non-integrated facilities. In other words, while Ameritech's TELRIC rates will allow it to recover the cost associated with building separate non-integrated facilities to provision an unbundled loop when COT technology is not utilized, in some

circumstances Ameritech may have the ability to provision the unbundled loop, via line station transfer, at a cost lower than that reflected in its TELRIC rates. Thus, the Commission finds that Ameritech may not assess special construction charges in addition to its current TELRIC rates for performing a line station transfer because it would over-recover its costs.

Defective loop recovery follows line station transfers in the list of complex work activities. The Commission concurs with Staff and finds that Ameritech's costs associated with defective loop recovery are already recovered in the TELRIC rate. When a loop becomes unusable because it requires maintenance, paragraph 268 of the FCC's First Report and Order indicates that Ameritech is obligated to "maintain, repair, or replace" it. Ameritech's costs associated with repairing defective circuits are reflected in its maintenance expenses, which Ameritech defines as costs "incurred in order to keep telephone plant and equipment resources in usable condition." Since Ameritech may not provide unusable UNEs to CLECs, its costs for repairing defective loops has been included in the TELRIC rate. Accordingly, Ameritech may not collect additional revenue for defective loop recovery since such would constitute double recovery of costs already reflected in TELRIC studies. This is true whether Ameritech seeks to collect for defective loop recovery through special construction charges or additions to its present TELRIC rates.

The third type of complex work activity concerns installing plug-in cards. Ameritech charges for acquiring and installing plug-in cards in a RT and COT to unbundle a loop in an IDLC/RSU environment if it determines that there are not enough plug-in cards in the RT and COT for a CLEC to use. As Staff demonstrated, Ameritech's TELRIC rates include the cost of plug-in cards. Installation of the plug-in cards is included as well via the in-plant/investment factor. The Commission finds that Ameritech may not charge for additional plug-in cards either through special construction charges or additions to its present TELRIC rates. Ameritech's argument that its cost studies only reflect existing plant is unpersuasive. In addition, the Commission notes that through the TELRIC rates that every CLEC pays, Ameritech is being compensated for plug-in cards whether they are needed or not.

Wire out of limits is the next type of complex work. Ameritech will perform wire out of limits when a CLEC requests a loop and the serving terminal lacks sufficient capacity. Performing a wire out of limits, Mr. Phipps states, entails connecting the requested loop to an adjacent terminal with spare facilities. Although Mr. Phipps indicates that wire out of limits is very similar to item C of Ameritech's tariff III. C. C. No. 20, Part 2, Section 5, Original Sheet No. 1, Staff nevertheless opposes charging for wire out of limits on the grounds that it is inappropriate to do so merely because the serving terminal has run out of capacity. Mr. Starkey further argues that charges in excess of present TELRIC rates for wire out of limits are inconsistent with Ameritech's tariff and constitute double recovery. In resolving this issue, the Commission first notes that it does not share Mr. Starkey's interpretation of Ameritech's tariff. Mr. Starkey's second basis for rejecting the charges, that such charges would constitute double recovery, is similar to Mr. Phipps' reasoning. Staff suggests that proper implementation

and observance of fill factors should prevent Ameritech from running out of capacity in the serving terminals. In other words, Staff is suggesting that Ameritech would double recover its costs if allowed to collect for wire out of limits since the fill factors incorporated into the TELRIC rates allow Ameritech to maintain a certain amount of excess capacity. The Commission agrees and Ameritech may not assess additional charges for wire out of limits either through special construction charges or additions to its current TELRIC rates due to the circumstances under which it performs wire out of limits.

The fifth type of complex work, break and connect through, involves, according to Mr. Phipps, breaking a connected circuit at a terminal where no service is being provided at that customer location, and connecting that circuit to a different customer location. The Commission agrees with Staff that Ameritech has not sufficiently distinguished this activity from the other types of simple dispatch, the costs of which Ameritech admits are recovered through its TELRIC rates. As such, Ameritech may not assess additional charges for break and connect through either as nonrecurring special construction charges or as an addition to its existing TELRIC rates.

The final type of complex work activity consists of installing pair gain devices. When no spare copper loops are available, Mr. Phipps asserts that Ameritech can use a pair gain device to expand the capacity of single copper loop by six times by deriving six pairs from a single pair. This type of complex work activity presents a situation similar to that of line station transfer in that Ameritech's TELRIC rates do not appear to include the specific cost of the actual pair gain device. As with line station transfer, however, installing pair gain devices appear to present an opportunity for Ameritech to incur lower costs associated with providing an unbundled loop than building separate non-integrated facilities, the full cost of which is already included in TELRIC rates, as discussed below. The Commission concludes that Ameritech may not assess special construction charges on a CLEC when it incurs lower costs associated with installing pair gain devices since it may not assess special construction charges for building more costly separate non-integrated facilities. Stated another way, Ameritech should not be able to assess additional charges simply because it has the option of a short-cut which is not reflected in its TELRIC rates when, had the short-cut not been available, Ameritech would have been obligated to provide a loop anyway without assessing additional charges. Accordingly, Ameritech may not assess additional charges for installing pair gain devices either as nonrecurring special construction charges or as an addition to its existing TELRIC rates.

The Commission, in addition, notes that Ameritech would gain, at a CLEC's expense, additional capacity on its copper lines if the CLEC uses less than the number of lines gained by installing the pair gain device. Not only would Ameritech charge the CLEC the TELRIC based rate for the loop provided as a result of installing a pair gain device, Ameritech would also receive revenues from other CLECs or retail customers using the loops "created" through the installation of the pair gain device. Such a windfall is not appropriate since Ameritech is still obligated to provide an additional loop without assessing additional charges in the event that installing pair gain devices is not

possible. Accordingly, Ameritech may not assess special construction charges or add to its TELRIC rate for installing pair gain devices.

With regard to IDLC/RSU technology, in those instances where a CLEC requests an unbundled loop served via IDLC/RSU and no spare copper loops are available, Ameritech argues that it is entitled to assess special construction charges to provision the unbundled loop if it deems appropriate. In such situations, Staff identifies two possible scenarios: either the IDLC/RSU is utilized in conjunction with COT technology, or it is not. The key difference between these two scenarios is that if COT technology is utilized, loops can be provisioned by utilizing plug-in cards at the RT and COT. If COT technology is not utilized, however, loops may be unbundled only by a line station transfer or building separate non-integrated facilities.

If Ameritech determines that the requested unbundled loop can be provisioned by installing plug-in cards, additional charges for such plug-in cards, either through special construction assessments or additions to the TELRIC rate, are not appropriate since, as indicated above, Ameritech's current TELRIC rates already include the cost investment and installation expense associated with plug-in cards. If COT technology is not present, meaning that additional plug-in cards are of no use, and a line station transfer is possible, Ameritech may not assess additional charges for the line station transfer as explained above. If an available unbundled loop may only be provisioned via the construction of new non-integrated facilities, the Commission concurs with Staff that such may be done through the acquisition and installation of a COT/RT system. The technical distinctions between IDLC and RSU do not merit different treatment since the same analysis and principle apply to both. Loops served via RSU may still be unbundled and made available through the use of a COT/RT system. As Staff demonstrated, the average costs of acquiring, installing, and maintaining these facilities necessary to provision an unbundled loop are already included in Ameritech's TELRIC rates. Given that TELRIC rates recover Ameritech's investment in a facility over the life of the facility, Ameritech's assessment of special construction charges for such a COT/RT system would constitute double recovery. Ameritech counters that it has no guarantee that a CLEC will use the new facility long enough to recover its costs. The Commission observes, however, that there is no evidence that the CLEC served by the facility will not use it for the facility's useful life. Even if the first CLEC to use the facility ceases to do so, there is insufficient evidence that other CLECs will not follow; or for that matter, that Ameritech will not use the facility for its own retail customers. Given that the capacity of such new facilities will likely exceed that requested by the CLEC, Ameritech is free to use the additional capacity to serve other CLECs or its own retail customers. In addition, whether constructing a COT/RT system qualifies as special construction under the list on Original Sheet Nos. 1 and 2 of Ill. C. C. No. 20, Part 2, Section 5 is irrelevant since it has been determined that Ameritech is already recovering the cost of such activity through existing TELRIC rates.

Also deserving comment is Ameritech's argument that charging a CLEC when a COT or RT must be placed is not an impediment to the development of local competition. Ameritech witness Suthers maintains that no impediment exists because

Ameritech's policy provides it and CLECs with symmetrical investment incentives. Ameritech contends that under its policy, both it and CLECs are faced with the same investment decision: is it in the company's best business interest to serve a particular customer, and, if so, how should the cost of doing so be recovered. To support this position, Ameritech relies on paragraph 334 of the FCC's First Report and Order, which discusses the greater risk faced by CLECs providing service through UNEs rather than resale. Setting aside the fact that Ameritech's TELRIC rates already recover the cost of a new COT or RT system, the Commission finds this argument untenable. In defense of its position, what Ameritech fails to address is the important fact that Ameritech owns any facilities in which a CLEC decides to "invest." Therefore, the investment decisions are not symmetrical. Even though a CLEC may recoup some of the money paid for a new COT or RT through services provided over such, it will never own the facility as Ameritech does after it installs facilities to serve its customers. Moreover, the fact that a CLEC paid for a new facility does not instill within it the privilege of using any additional capacity within that facility. This ability is held by Ameritech as part of its right of ownership. Accordingly, Ameritech can not legitimately claim that its policy creates symmetrical investment incentives.

The Commission finds that the cost of loop conditioning is not recovered in Ameritech's current TELRIC rates and qualifies as special construction under Ameritech tariff III. C. C. No. 20, Part 2, Section 5. Accordingly, Ameritech may assess special construction charges under III. C. C. No. 20, Part 2, Section 5 of its tariff so long as it does so in a nondiscriminatory manner as described below.

Finally, the Commission agrees with Staff's position on placing and splicing additional cable. As demonstrated by Mr. Phipps, Ameritech's current TELRIC rates, including the relevant fill factors, already recover any costs associated with placing and splicing cable to provision a CLEC with an unbundled loop. Accordingly, assessing additional charges for placing and splicing cable in excess of Ameritech's current TELRIC rates would constitute double recovery and is prohibited.

## **VII. DISCRIMINATION**

The next issue to address is whether Ameritech's special construction policy discriminates against CLECs. Ameritech allegedly assesses special construction charges on CLECs for many activities for which it would not assess special construction charges on similarly situated retail customers, resulting in a situation where end users are arguably more apt to take service from Ameritech than a CLEC. In light of the Commission's conclusion that Ameritech may only collect special construction charges for loop conditioning, it need only be decided how Ameritech may assess charges for this activity. To resolve this issue, however, it is necessary to examine the comparability of the provisioning of UNEs to CLECs and retail service to retail end users; a matter which is heavily contested.

### **A. Ameritech's Position**



rates the rates approved by the PUCT in Docket Nos. 20226 and 20272 by modifying its tariff within five days of entry of this order.<sup>58</sup>

Given the nature of these loop conditioning charges, they may be collected from CLECs up-front so long as Ameritech imposes the same charges on its retail customers up-front. Since these charges are TELRIC based, however, Ameritech must file with the Commission LRSIC based loop conditioning charges to be assessed on retail customers within 90 days of entry of this order. The TELRIC based loop conditioning charges should be collected from retail customers until LRSIC based charges are available because otherwise Ameritech would be able to continue its discriminatory practices. Accordingly, Ameritech must also modify its tariff to reflect that its retail customers are to be charged the conditioning rates in the PUCT Docket Nos. 20226 and 20272 until LRSIC based loop conditioning charges are approved.

### **VIII. PREORDERING INFORMATION**

Certain CLECs have also raised the issue of availability of preordering information. They contend that without sufficient preordering information they can not determine when a particular request for a UNE will result in special construction charges. They further state that Ameritech's possession of such information enables it to establish the correct customer expectation for service installation while CLECs can not do so since they lack comparable access to such information. Ameritech uses this information to its advantage, they argue, and withholds it from CLECs as a means of discriminating against them.

As a general matter, the Commission does not believe that this docket is the appropriate proceeding in which to establish parameters on preordering. To the extent that preordering relates to special construction, the Commission lacks sufficient information to determine what information should be available. In any event, the Commission finds that its definition of "available" and clarification of the tariff terms that govern available facilities should provide CLECs with a reasonable expectation of when special construction charges will be assessed.

### **IX. FINDING AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record, is of the opinion and finds that:

- (1) Ameritech is a telecommunications carrier certificated to provide local exchange and intraMSA interexchange services in Illinois;

<sup>58</sup> Had it elected to adopt the higher BroadSpan rates, the Commission realizes that the true up mechanism would also protect those CLECs paying those rates. Because it is this Commission's policy, however, to support competition, the lower PUCT rates have been adopted since the higher BroadSpan rates may deter competition.

- (2) the Commission has jurisdiction over the above-referenced parties and the subject matter hereof;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record herein and are hereby adopted as findings of fact and conclusions of law;
- (4) certain charges assessed by Ameritech pursuant to its special construction policy constitute double recovery of costs;
- (5) Ameritech's special construction policy discriminates against CLECs in the assessment of special construction charges for loop conditioning;
- (6) Ameritech's tariff and special construction policy should be revised as described in the prefatory portion of this Order;
- (7) within five days of entry of this Order, Ameritech should modify its special construction policy and file revised tariff sheets as described in Finding (6); and
- (8) within 90 days of entry of this Order, Ameritech should file LRSIC based rates for loop conditioning to be applied to retail customers.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Illinois Bell Telephone Company's special construction policy double recovers certain costs and discriminates against competitive local exchange carriers in the assessment of special construction charges for loop conditioning.

IT IS FURTHER ORDERED that Illinois Bell Telephone Company shall revise its tariff and special construction policy as set forth in Findings (6) and (7).

IT IS FURTHER ORDERED that Illinois Bell Telephone Company shall file LRSIC based rates for loop conditioning as described in Finding (8).

IT IS FURTHER ORDERED that any petitions, objections, or motions made in this proceeding that have not been specifically ruled upon are hereby disposed of in a manner consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 15th day of August, 2000.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)